APPEAL NO. 93148

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act). A contested case hearing with (hearing officer) presiding as hearing officer was held on January 15, 1993, to consider whether the claimant, JG, who is the respondent in this appeal, sustained a compensable injury to her knee on (date of injury), while acting in the course and scope of her employment at the RT Apartments for her employer (employer). The hearing officer determined that she had sustained a compensable injury and ordered medical and applicable temporary income benefits paid to claimant.

The carrier appeals, arguing that it was reversible error for the hearing officer to admit, over objection, an unsigned and unauthenticated transcript purporting to be an interview with a witness (not present at the hearing) who corroborated claimant's version of the accident. The carrier further argues that the decision is against the great weight and preponderance of the evidence. No response was filed.

DECISION

We find no reversible error by the hearing officer, and accordingly we affirm the decision below.

I.

FACTS

The claimant, JG, was the manager of the RT Apartments which were operated by the employer on (date of injury). The claimant lived on the premises, and stated that she was injured on that day while walking to her office when she tripped on a sewer cap that was sticking up from the ground and twisted her knee. She stated that this occurred shortly before eight o'clock in the morning, and that after she cried out, two apartment housekeepers, DL(Ms. L) and MG (Ms. G), came and saw her. Claimant said that later that morning her husband got some crutches which had belonged to a former roommate, and she used these until she was able to go to the doctor. She said she was in great pain and her right knee was swollen.

On (date of injury), she saw Dr. R (Dr. R). His medical report notes pain but no swelling, and recites that claimant said she was injured at around 6:30 that morning. The next day, claimant saw Dr. T (Dr. T), an orthopedic surgeon, who diagnosed an injury of the right meniscus. Claimant ultimately had arthroscopic surgery on her knee.

The claimant denied she was injured at a bingo game, although she said she had attended a game on days before and after the injury.

Ms. (Ms. G) testified that she had been told by an apartment resident that claimant

was injured at a bingo game. She stated that the first time she saw the claimant, on the morning of (date of injury), claimant was on crutches. This is contradicted by the transcribed statement that Ms. G acknowledged she gave to the adjuster for the carrier, on March 19, 1992. That statement, authenticated by Ms. G at the hearing, contains a detailed recitation of how claimant told Ms. G and Ms. L that she was injured at a bingo game and asked both of them to say instead that she was injured at the apartment complex premises.

A statement, not signed or authenticated, and ostensibly provided by Ms. L, was admitted into evidence over the carrier's objection. The statement was purportedly given to the carrier's adjuster and recited that Ms. L heard claimant cry out, and then saw her in pain from her knee.

II.

WHETHER THE HEARING OFFICER ERRED BY ADMITTING AN UNSIGNED, UNAUTHENTICATED TRANSCRIPT OF A PURPORTED STATEMENT BY MS. L

We agree with carrier that the hearing officer erred in admitting over objection the unsigned, unsworn, typewritten transcript of what purports to be a telephone interview of Ms. L. Carrier objected on the grounds of Article 8308-6.34(e) as well as the hearsay and lack of authentication, noting Article 8308-6.34(e) allows the hearing officer discretion to admit only signed witness statements. The hearing officer overruled the objection with no clear articulation of the basis of his ruling. The hearing officer's decision describes the statement as corroborative evidence in the statement of the evidence.

In Texas Workers' Compensation Commission Appeal No. 92490, decided October 28, 1992, we held that admission of such a statement over objection was error. As that decision notes, Article 8308-6.34(e) provides that the hearing officer may accept written statements signed by a witness, and we further observed that while Rule 142.8 provides for the use of summary procedures, including sworn witness statements, it did not limit the provisions of Article 8308-6.34(e). Article 8308-6.34(a)(5) provides that the hearing officer shall allow the presentation of evidence by affidavit; Article 8308-6.34(b) permits the hearing officer to use summary procedures, "including witness statements;" and, Article 8308-6.34(e) provides that the hearing officer may accept written statements signed by a witness. A hearing officer is on firm ground in refusing to admit unsigned witness statements, even when using summary procedures.

Notwithstanding that conformity to the legal rules of evidence is unnecessary in contested case hearings, Article 8308-6.34(e), the obvious problem with the particular exhibit objected to in this case--an unsigned, unsworn, typewritten transcript not self-authenticating under traditional rules of evidence--is the absence of any indicia of authenticity or identification; that is, that the document is what its proponent claims it is. No

witness testified to its authenticity nor was there any other extrinsic evidence of its authenticity. We repeat what we have said in our earlier decision, that we do not read other references to "witness statements" in the 1989 Act as inconsistent or in conflict with the reference in Article 8308-6.34(e) authorizing the acceptance of signed witness statements.

Although we find error in the admission of this document, we cannot agree that such error was reversible. However unfortunate the hearing officer's reference to such statement as corroborative may be, the fact is that the record contains other corroborative evidence, specifically medical evidence, of an injury. Moreover, the testimony of Ms. G, when combined with her statement that was properly authenticated at the contested case hearing, presents contradictions and inconsistencies that the hearing officer could have considered as undermining Ms. G's credibility. Finally, as we have stated before, a claimant's testimony alone can be sufficient to support a determination that a compensable injury has occurred. Gee v. Liberty Mutual Insurance Co., 765 S.W.2d 394 (Tex. 1989).

III.
WHETHER THE DECISION IS AGAINST THE GREAT WEIGHT AND PREPONDERANCE OF THE EVIDENCE

Article 8308-6.34(e) provides that the hearing officer is the sole judge not only of the relevance and materiality of the evidence, but also of the weight and credibility it is to be given. The hearing officer may believe all, part, or none of the testimony of any one witness, including claimant, and may give credence to testimony even where there are some discrepancies. Taylor v. Lewis, 553 S.W. 2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). As the trier of fact, it was for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W. 2d 701 (Tex. Civ. App.-Amarillo 1974, no writ.). There are conflicts in the record, but those were the responsibility of the hearing officer to judge, considering the demeanor of the witnesses and the record as a whole. As the Appeals Panel has observed before, the history given by a patient of an injury as set out in a medical record would not be good evidence to prove that an accident in fact occurred. Presley v. Royal Indemnity Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). However, the existence of a medically documented injury is a factor that the hearing officer may consider in determining whether the testimony of a claimant as to whether an accident occurred is credible. *See* Texas Workers' Compensation Commission Appeal No. 92300, decided August 13, 1992.

Consequently, ignoring altogether the unsigned statement of Ms. L, there is sufficient evidence to support the findings and conclusions that an on-the-job compensable injury occurred. They are not so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision of the hearing officer is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge